

## **Assembly Bill No. 1851**

### **CHAPTER 67**

An act to amend Sections 3412, 3413, 3600, 3601, 3602, 3603, 3604, 3610, 3611, and 3612 of, and to add Section 3613 to, the Probate Code, relating to incapacity.

[Approved by Governor June 23, 2004. Filed with  
Secretary of State June 24, 2004.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1851, Harman. Incapacity: protective proceedings.

(1) Existing law provides for the disposition of certain funds held for the benefit of a minor or incompetent person.

This bill would revise and recast those provisions, and would replace the term "incompetent person" with the term "person with a disability," as defined. The bill would provide that those provisions do not apply to an adult with capacity who has no conservator, except as specified, and would make various technical, nonsubstantive changes to those provisions.

(2) Existing law provides that specified funds held for the benefit of a minor or incompetent person may be ordered by the court to be paid to a special needs trust.

This bill would permit a parent, guardian, conservator, or other interested person to instead petition the probate court to establish that special needs trust, if a specified condition is met.

(3) As a result of certain protective proceedings, existing law requires the court to have continuing jurisdiction over the money and property paid, delivered, deposited, or invested for a minor until that minor reaches 18 years of age.

This bill would additionally require the court to maintain continuing jurisdiction of the money and property of an individual who meets the definition of a person with a disability, as defined, after he or she reaches 18 years of age, until terminated by the court.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 3412 of the Probate Code is amended to read:

3412. If the minor has a guardian of the estate and the sole asset of the guardianship estate is money, the court may order that the guardianship of the estate be terminated and, if the court so orders, the court in its discretion shall also order any one or more of the following:

(a) That the money be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(c) If the money of the guardianship estate does not exceed twenty thousand dollars (\$20,000), that the money be held on any other condition that the court in its discretion determines to be in the best interests of the minor.

(d) If the money of the guardianship estate does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

(e) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

SEC. 2. Section 3413 of the Probate Code is amended to read:

3413. If the minor has no guardian of the estate and there is money belonging to the minor, the court may order that a guardian of the estate



be appointed and that the money be paid to the guardian or the court may order any one or more of the following:

(a) That the money be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(c) If the money belonging to the minor does not exceed twenty thousand dollars (\$20,000), that the money be held on any other condition that the court in its discretion determines to be in the best interests of the minor.

(d) If the money belonging to the minor does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

(e) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

SEC. 3. Section 3600 of the Probate Code is amended to read:

3600. This chapter applies whenever both of the following conditions exist:

(a) A court (1) approves a compromise of, or the execution of a covenant not to sue on or a covenant not to enforce judgment on, a minor's disputed claim, (2) approves a compromise of a pending action or proceeding to which a minor or person with a disability is a party, or (3) gives judgment for a minor or person with a disability.

(b) The compromise, covenant, or judgment provides for the payment or delivery of money or other property for the benefit of the minor or person with a disability.

SEC. 4. Section 3601 of the Probate Code is amended to read:

3601. (a) The court making the order or giving the judgment referred to in Section 3600, as a part thereof, shall make a further order authorizing and directing that reasonable expenses, medical or otherwise and including reimbursement to a parent, guardian, or conservator, costs, and attorney's fees, as the court shall approve and allow therein, shall be paid from the money or other property to be paid or delivered for the benefit of the minor or person with a disability.

(b) The order required by subdivision (a) may be directed to the following:

(1) A parent of the minor, the guardian ad litem, or the guardian of the estate of the minor or the conservator of the estate of the person with a disability.

(2) The payer of any money to be paid pursuant to the compromise, covenant, or judgment for the benefit of the minor or person with a disability.

SEC. 5. Section 3602 of the Probate Code is amended to read:

3602. (a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601, shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in subdivisions (c) and (d), if there is a guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601, shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be



paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order one or more of the following:

(1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(2) If there is a guardianship of the estate of the minor, that all or part of the remaining balance of money and other property not become a part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(3) That all or part of the remaining balance of money and other property not become a part of the guardianship estate and, instead, be transferred to the trustee of a trust which is either created by, or approved of, in the order or judgment described in Section 3600. This trust shall be revocable by the minor upon attaining 18 years of age, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(d) Upon petition of the guardian, conservator, or any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be paid to a special needs trust established under Section 3604 for the benefit of the minor or person with a disability.

(e) If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under subdivision (c) shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(f) Notice of the time and place of hearing on a petition under subdivision (d), and a copy of the petition, shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

SEC. 6. Section 3603 of the Probate Code is amended to read:



3603. Where reference is made in this chapter to a “person with a disability,” the reference shall be deemed to include the following:

- (a) A person for whom a conservator may be appointed.
- (b) Any of the following persons, subject to the provisions of Section 3613:

(1) A person who meets the definition of disability as defined in Section 1382c(a)(3) of Title 42 of the United States Code, or as defined in Section 416(i)(1) of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 416.905 of Title 20 of the Federal Code of Regulations.

(2) A person who meets the definition of disability as defined in paragraphs (1), (2), and (3) of subsection (d) of Section 423 of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 404.1505 of Title 20 of the Federal Code of Regulations.

(3) A minor who meets the definition of disability, as set forth in Part 416.906 of Title 20 of the Federal Code of Regulations.

(4) A person with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code.

SEC. 7. Section 3604 of the Probate Code is amended to read:

3604. (a) (1) If a court makes an order under Section 3602 or 3611 that money of a minor or person with a disability be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court. The court may transfer jurisdiction to the court in the proper county for commencement of a proceeding as determined under Section 17005.

(2) If the court referred to in subdivision (a) could have made an order under Section 3602 or 3611 to place that money into a special needs trust, but that order was not requested, a parent, guardian, conservator, or other interested person may petition a court that exercises jurisdiction pursuant to Section 800 for that order. In doing so, notice shall be provided pursuant to subdivisions (e) and (f) of Section 3602, or subdivision (c) of Section 3611, and that notice shall be given at least 15 days before the hearing.

(b) A special needs trust may be established and continued under this section only if the court determines all of the following:

(1) That the minor or person with a disability has a disability that substantially impairs the individual’s ability to provide for the individual’s own care or custody and constitutes a substantial handicap.

(2) That the minor or person with a disability is likely to have special needs that will not be met without the trust.



(3) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or person with a disability.

(c) If at any time it appears (1) that any of the requirements of subdivision (b) are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary, and (2) that the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, or a county or city and county in this state has a claim against trust property, that department, county, or city and county may petition the court for an order terminating the trust.

(d) A court order under Section 3602 or 3611 for payment of money to a special needs trust shall include a provision that all statutory liens in favor of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state shall first be satisfied.

SEC. 8. Section 3610 of the Probate Code is amended to read:

3610. When money or other property is to be paid or delivered for the benefit of a minor or person with a disability under a compromise, covenant, order or judgment, and there is no guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in this article.

SEC. 9. Section 3611 of the Probate Code is amended to read:

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall, upon application of counsel for the minor or person with a disability, order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on conditions the court determines to be in the best interest of the minor or person with a disability.

(c) After a hearing by the court, that the remaining balance of any money and other property be paid to a special needs trust established





under Section 3604 for the benefit of the minor or person with a disability. Notice of the time and place of the hearing and a copy of the petition shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

(d) If the remaining balance of the money to be paid or delivered does not exceed twenty thousand dollars (\$20,000), that all or any part of the money be held on any other conditions the court in its discretion determines to be in the best interest of the minor or person with a disability.

(e) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars (\$5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(f) If the remaining balance of the money and other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(g) That the remaining balance of the money and other property be paid or delivered to the trustee of a trust which is created by, or approved of, in the order or judgment referred to in Section 3600. This trust shall be revocable by the minor upon attaining the age of 18 years, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(h) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.





(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

(i) That the remaining balance of the money and other property be paid or delivered to the person with a disability.

SEC. 10. Section 3612 of the Probate Code is amended to read:

3612. (a) Notwithstanding any other provision of law and except to the extent the court orders otherwise, the court making the order under Section 3611 shall have continuing jurisdiction of the money and other property paid, delivered, deposited, or invested under this article until the minor reaches 18 years of age.

(b) Notwithstanding subdivision (a), the trust of an individual who meets the definition of a person with a disability under paragraph (3) of subdivision (b) of Section 3603 and who reaches 18 years of age, shall continue and be under continuing court jurisdiction until terminated by the court.

SEC. 11. Section 3613 is added to the Probate Code, to read:

3613. Notwithstanding any other provision of this chapter, a court may not make an order or give a judgment pursuant to Section 3600, 3601, 3602, 3610, or 3611 with respect to an adult who has the capacity within the meaning of Section 812 to consent to the order and who has no conservator of the estate with authority to make that decision , without the express consent of that person.

